



March 31, 2023

Via Electronic Mail

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attention: Vanessa Countryman, Secretary

Re: Comment Letter on the Proposed Order Competition Rule
File No. S7-31-22

Dear Ms. Countryman:

The Long Term Stock Exchange (**LTSE**)¹ appreciates the opportunity to comment on the Commission’s proposed Order Competition Rule (the **Proposal**).² Under the Proposal, which would amend Regulation NMS, national securities exchanges and alternative trading systems (**ATSs**) can qualify as “open competition trading centers” to hold qualified auctions if they meet certain requirements. One of these requirements is that the national securities exchange or ATS has an average daily share volume of one percent or more of the aggregate average daily share volume for NMS stocks as reported by an effective transaction reporting plan (the **Volume Threshold**).³ We write to encourage the Commission to remove the Volume Threshold from any final rule, at least as it relates to national securities exchanges. We think that creating different tiers of national securities exchanges based on market share runs counter to the Exchange Act and principles of fair competition and therefore would set a harmful and anti-competitive precedent that the Commission should not want to, and likely does not want to, set. In addition, we think that the Volume Threshold is not necessary to further any Commission priority in the Proposal.

LTSE believes that tiered treatment of national securities exchanges based on size runs counter to the Exchange Act and principles of fair competition. Indeed, in authorizing the Commission to issue Regulation NMS, Congress found that “[i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure ... *fair*

¹ LTSE is an SEC-registered national securities exchange for companies and investors who share a long-term vision. By design, LTSE supports companies that aim to innovate consistently, partner with mission-aligned investors, minimize pressures to hit short-term targets, and run their businesses with the stewardship that stakeholders and society demand.

² SEC, Proposed Rule, *Order Competition Rule*, 88 Fed. Reg. 128 (Jan. 3, 2023).

³ *Id.* at 152.

competition among brokers and dealers, *among exchange markets*, and between exchange markets and markets other than exchange markets,”⁴ and directed the Commission to proceed “having due regard” for these interests.⁵ Accordingly, in authorizing the Commission to issue Regulation NMS, Congress gave the SEC a mandate to ensure fair competition among the exchanges.

The Commission remains focused on competition among national securities exchanges. Chair Gensler recently explained that “[t]here’s a tendency for central intermediaries to benefit from scale, network effects, and access to valuable data Thus, we must remain vigilant to areas where concentration and potential economic rents have built up, or may do so in the future.”⁶ To prevent concentration among financial intermediaries and promote competition, Chair Gensler noted that the SEC has several tools at its disposal. These include access, which is important “not just for the biggest or most central players. Accessible markets bring in more competitors. Access increases innovation, as market participants seek new ways to compete.”⁷ In addition, “treating like market participants alike, and promoting market integrity, increases investor trust in the overall markets. It focuses participants’ competition on price, service, and other key factors, rather than on whether the game is fair or the information is trustworthy.”⁸

The proposed Volume Threshold would run counter to these concerns. Rather, it would create a tiered system, in which large exchanges have access to business opportunities closed to their smaller counterparts like LTSE. Worse still, this anti-competitive impact would be self-reinforcing: as future market entrants (and non-qualifying exchanges like LTSE) attempt to reach the Volume Threshold, they would have no access to retail order flow to increase their share of the aggregate average daily share volume. Accordingly, the Volume Threshold would entrench the dominance of current market leaders.

Further, as applied in this particular case, we do not believe that there is a compelling rationale for the Volume Threshold. The Proposal expresses the concern that the absence of a threshold could lead to a proliferation of new national securities exchanges to operate qualified auctions, a corresponding “substantial increase of connectivity costs and complexity” for market participants and a refusal of many market participants to incur that cost and complexity, which could detract from the level of price competition.⁹ We do not think those concerns are well founded. Successfully securing Commission approval for registration as a national securities exchange is extremely costly and complex, with high financial, technical, and legal barriers to entry. Once approved, operating an Exchange requires significant resources. It seems to us unlikely that a person would register a national securities exchange for the sole purpose of having it qualify as an open competition trading center and, even if a small number of market participants did, it is unlikely that there would be so many as to create a “substantial increase of connectivity costs and

⁴ 15 U.S.C. § 78k-1(a)(1)(C) (emphasis added).

⁵ *Id.* at § 78k-1(a)(2)

⁶ Chair Gary Gensler, “*Competition and the Two SECs*,” *Remarks Before the SIFMA Annual Meeting*, SEC (Oct. 24, 2022), available at <https://www.sec.gov/news/speech/gensler-sifma-speech-102422>.

⁷ *Id.*

⁸ *Id.*

⁹ *Order Competition Rule*, 88 Fed. Reg. at 152.

complexity.”¹⁰ In addition, we note that, depending on the success and price improvements of the auctions on such an exchange, a broker-dealer could be required by its best execution obligations to connect to that exchange.

As a result, we urge the Commission to remove the Volume Threshold and remain aware in future proposals and rulemaking to not tier national securities exchanges and thereby inadvertently risk harming competition among national securities exchanges.

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We appreciate the opportunity to comment on the Proposal. If you have any questions, please feel free to contact Michelle Greene, Interim Chief Executive Officer, at (202) 880-4025 and michelle@longtermstockexchange.com or James Buckley, Chief Regulatory Officer, at (929) 837-1125 and james.buckley@longtermstockexchange.com.

Very truly yours,

Long Term Stock Exchange

¹⁰ *Id.*